

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Monroe D. Kiar, Town Attorney / (954) 584-9770

SUBJECT: Resolution

AFFECTED DISTRICT: All

TITLE OF AGENDA ITEM:

**A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,
ACCEPTING A CONSERVATION EASEMENT FROM MR.
CLIFFORD H. MACBROOM AND MS. LUCILLE M. SOLANA.**

REPORT IN BRIEF:

The Town Attorney's Office was directed to prepare a Conservation Easement to be granted by Mr. Clifford H. MacBroom and Ms. Lucille M. Solana for the purpose of constructing and maintaining equestrian/recreation trail on said easement.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT:

RECOMMENDATION: Suitable for the Town Council's review and deliberation.

ATTACHMENTS: Conservation Easement, Resolution

RESOLUTION R-2005-

**A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,
ACCEPTING A CONSERVATION EASEMENT FROM MR.
CLIFFORD H. MACBROOM AND MS. LUCILLE M. SOLANA.**

WHEREAS, Mr. Clifford H. MacBroom and Ms. Lucille M. Solana are owners of a certain parcel of land abutting the Town of Davie Equestrian and Recreation Trail System; and

WHEREAS, the Town of Davie desires to utilize a portion of the above referenced parcel of land to connect to the existing trail system and thereby, enlarge the trail system; and

WHEREAS, the property owners are agreeable to granting to the Town a Conservation Easement to allow the Town to construct and maintain an equestrian/recreational trail on the property for the benefit of the public.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF DAVIE, FLORIDA:**

SECTION 1. The Town Council of the Town of Davie accepts the Conservation Easement granted by Mr. Clifford H. MacBroom and Lucille M. Solana attached hereto.

PASSED AND ADOPTED THIS ____ day of _____, 2005.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2005.

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") is given this ____ day of _____, 2005, by **Mr. Clifford H. MacBroom and Ms. Lucille M. Solana** ("Grantors"), 11200 Orange Drive, Davie, Florida 33328, to the **TOWN OF DAVIE** ("Grantee"), a municipal corporation of the State of Florida (the "**Town**"), 6591 Orange Drive, Davie, Florida 33314.

WITNESSETH

WHEREAS, Mr. Clifford H. MacBroom and Ms. Lucille M. Solana are the owners of certain lands situated in Broward County Florida, and more specifically described in **Exhibit "A"**, attached hereto and incorporated herein by reference and referred to herein as the "Property"; and

WHEREAS, a portion of the Property abuts an existing trail system established by the Town of Davie for equestrian and recreational uses; and

WHEREAS, the Town of Davie desires to construct and maintain a recreational/equestrian trail upon approximately forty feet (40") of the property abutting the existing trail system that will connect to and enlarge the existing trail system; and

WHEREAS, Mr. Clifford H. MacBroom and Ms. Lucille M. Solana as "Grantors" have agreed to grant and the Town of Davie as "Grantee" has agreed to accept this Conservation Easement in order to permit the Town to construct a recreational/equestrian trail on the property and connect said trail to the existing Town of Davie trail system for the benefit of the public; and

WHEREAS, this Conservation Easement shall establish the specific rules and manner by which the easement shall be constructed, maintained and utilized.

NOW, THEREFORE, Mr. Clifford H. MacBroom and Ms. Lucille M. Solana hereby grant, create, and establish a perpetual Conservation Easement in favor of the Town of Davie upon the conservation tract, which shall run with the property and shall be binding upon the Grantor, their heirs, successors or assigns, and shall remain in full force and effect in perpetuity.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. It is the purpose of the Conservation Easement to allow the Town to enter onto the property to construct and maintain upon the conservation tract, a recreational/equestrian trail for the benefit of the residents of the Town of Davie. Such trail shall be utilized by the public for permitted recreational and equestrian uses solely. It is the further purpose of the Conservation Easement to allow the Town of Davie to connect the recreational/equestrian trail built upon the property to the already existing Town of Davie recreational/equestrian trail system. To carry out this purpose, the following rights are conveyed to the Town of Davie by this easement:

(a) To enter upon the conservation tract in a reasonable manner and at reasonable times with any necessary equipment or vehicles to construct and/or maintain a recreational/equestrian trail on the property.

(b) To utilize its police powers and any other regulatory powers lawfully possessed by the Town to enjoin any activity on or use of any portion of the conservation tract and/or recreational/equestrian trail that is inconsistent with this Conservation Easement or the use of the recreational/equestrian trail for permissible equestrian or recreational purposes. The Town shall further have the right to enforce the restoration of such areas of the conservation tract and/or recreation/equestrian trail that may be damaged by any inconsistent activity on and/or use of the property. The Town shall be entitled to recover the cost of restoring the conservation tract or equestrian trail from the parties or individuals causing damage to the trail section.

2. Except for the creation, enhancement, maintenance, and monitoring activities conducted on the property by the Town and other activities and improvements related to the recreational/equestrian trail and conservation tract, the following activities are prohibited in or on the conservation tract and/or recreational trail:

(a) The construction or placement of buildings, signs, utilities, or other structures on or above the ground;

(b) Any dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, machinery, ashes or any other materials on the conservation tract and/or recreational/equestrian trail;

(c) Any excavation, dredging, or removal of gravel, soil, rock, or other material substance in any manner that affects the surface of the recreational/equestrian trail and/or conservation tract;

(d) Any acts or uses detrimental to the preservation of the recreational/equestrian trail and/or any acts or uses in violation of the Town of Davie Code of Ordinances;

(e) Any acts or uses inconsistent with the utilization of the conservation tract as a recreational/equestrian trail.

3. The general public shall be conveyed the right to utilize the recreational/equestrian trail in any permissible manner and consistent with the Code of Ordinances of the Town of Davie solely as a pedestrian walkway, a bike path and equestrian trail. The Town shall erect a sign indicating that the Easement shall be used during the time period from sunrise to sunset and the trail shall be closed during the hours of sunset to sunrise. However, Town shall be under no legal obligation to enforce any restrictions on the utilization of the Easement pertaining to the above stated time period.

4. Grantors shall not be responsible for any costs related to the operation, upkeep and maintenance of the equestrian trail and/or conservation tract.

5. Town of Davie shall not be responsible for the payment of any real property taxes and assessments levied by any governmental authority on the conservation tract to the extent that the conservation tract or any portion thereof is taxable.
6. As consideration for Grantors' conveyance of the Conservation Easement to Town, Town shall construct and maintain a landscaped berm barrier on Grantors' Conservation Easement and Town's right-of-way adjacent to Grantors' eastern property line bordering Hiatus Road. The Town of Davie and Mr. MacBroom will enter into a Letter of Understanding for the maintenance of the southern property line for the Robbins Lodge Preserve. The Letter of Understanding shall be Exhibit "B" and the drawing of the berm detail shall be Exhibit "C". The easement parcel is described in Exhibit "D".
7. This Agreement shall terminate and the Conservation Easement shall be abolished in the event that the Town does not construct and maintain a berm and/or landscape barrier as indicated above, or fails to comply with the Letter of Understanding (Exhibit "B"), or utilizes the Conservation Easement for any other use inconsistent with the uses specified within this Agreement or discontinues the use of the Conservation Easement. This Agreement shall not terminate nor shall the Conservation Easement be abolished unless the Grantors provide written notification to the Town that any of the above stated circumstances have occurred. Upon receipt of the written notification from Grantors, the Town shall have sixty (60) days to cure the defects specified with the notification.
8. In the event that Grantors plat or re-plat all or part of the subject property and a Governmental Entity requires all or part of the Conservation Easement as a right-of-way for the approval of that application, the Conservation Easement shall be abolished and granted to the Governmental Entity for its right-of-way.
9. The terms and conditions of this Conservation Easement shall be construed and governed in accordance with the laws of the State of Florida. In the event of any dispute hereunder or any action to interpret or enforce this Agreement, the venue of such actions shall be exclusively in the Seventeenth Judicial Circuit, in and for Broward County Florida. Any costs, including but not limited to reasonable attorney's fees and administrative, trial and appellate court costs which are incurred in enforcing, the terms and restrictions of this Conservation Easement, shall be borne by and recoverable against the non-prevailing party in such proceedings.
10. This Conservation Easement shall be recorded in the public records of Broward County, Florida. Grantors' obligations shall be binding upon the Grantors, their heirs, successors or assigns in perpetuity and shall inure to the benefit of the Town of Davie. The liabilities and responsibilities set forth herein shall run with the land in perpetuity.
11. If any provision of this Conservation Easement or the application thereof to any person is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

12. All notices, consents, approvals or any other communications shall be in writing and shall be deemed properly given if delivered through United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. The terms, conditions, restrictions and purpose of this Conservation Easement shall be inserted by Grantors in any subsequent deed or instrument by which Grantors divest themselves of any interest in the Property.

14. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns and successors-in-interest, which shall be filed in the public records in Broward County.

15. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantors to use this Easement Area for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinated to this Conservation Easement.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever. This Conservation Easement shall be recorded in the Public Records of Broward County and the covenants, terms, conditions, restrictions and purpose imposed with this Conservation Easement shall not only be binding upon Grantors, but also their agents, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the property. This Conservation Easement shall be recorded following its formal acceptance by the Town of Davie Town Council.

Grantors hereby covenant with said Grantee that Grantors are lawfully seized of said Conservation Area in fee simple; that the Conservation Area is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and all mortgages have been joined or subordinated; that Grantors have good right and lawful authority to convey this Conservation Easement; and that they hereby fully warrant and defend the title to this Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantors have hereunto set its authorized hand this ____ day of _____, 2005.

Signed, sealed and delivered in our
Presence as witnesses:

By: _____
Print Name: _____

Clifford H. MacBroom, Grantor

By: _____

-

Print Name: _____

Lucille M. Solana, Grantor

STATE OF FLORIDA)
)
COUNTY OF _____)

On this ____ day of _____, 2005 before me, the undersigned notary public,
personally appeared **CLIFFORD H. MacBROOM and LUCILLE M. SOLANA** who are
____ personally known to me or who have produced _____ as identification and
are the persons who subscribed to the foregoing instrument.

Notary: _____
Print Name: _____

Notary Public, State of _____
My commission expires:

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